



(916) 445-6414

May 3, 1985

RE: New Construction--Change In Use

Dear Mr.

This is in response to your letter of March 8, 1985, in which you ask whether the remodeling of an existing store to a restaurant constitutes new construction. You state that improvements such as carpeting, lighting, and fixtures were added, but there was no change in the square footage. The assessor has reappraised the property based on the change in use. You contend that the use of the property prior to remodeling was commercial and that it is still used for commercial purposes. Therefore, you argue that there has been no change in use to constitute new construction.

Revenue and Taxation Code Section 70(a)(2), provides that new construction means any improvement, including fixtures, which constitutes a major rehabilitation or which converts the property to a different use. Rule 463(b)(3), provides that new construction includes any improvement which changes the way in which the portion of the structure that has been altered is used. The Rule uses as an example of a change in use the alteration of a warehouse to a retail store or a restaurant. You correctly state in your letter that this example illustrates a change from industrial use to commercial use. You point out that in the present case, the use of the property prior to remodeling was commercial and it remains used for commercial purposes after remodeling. This is addressed in a Fall 1982 report on The Assessment of Newly Constructed Property and Property Under Construction published by the Assessment Standards Division of the Department of Property Taxes for the State Board of Equalization. On page 11, the Property Taxes Department's position on this issue is stated as follows:

"Basically, there are five general classifications of use types. These are agricultural, residential, commercial, industrial and recreational. Any physical alteration of land or improvements leading to a change from one of these uses to another would qualify as new construction.

p-13  
-720-272-1111

21

May 3, 1985

"Further, there are sub-uses within each of these general classifications and any physical alteration leading to a change from one sub-use to another would also qualify as new construction.

\* \* \*

"Following is a list of uses, both general and sub-uses. The list is not intended as all inclusive but rather illustrative.

\* \* \*

General UseSub-Use

## Commercial

Office Buildings  
Financial Buildings  
Retail Stores  
Professional Buildings  
Food Services  
Cocktail Lounges  
Food Sales  
Automotive Sales  
Service and Repair Shops"

As you can see, retail stores and food services constitute two different sub-uses in the commercial use. It is our position that physical alterations that lead to a change from one of these sub-uses to another constitutes new construction.

If you have any questions or wish to discuss this further, please contact me.

Very truly yours,

Michele P. Hicks  
Tax Counsel

MPH:mw

cc: Mr. Alexander H. Pope, Los Angeles County Assessor

bcc: Mr. Gordon Adelman  
Mr. Robert Gustafson  
Mr. Verne Walton

May 3, 1985

"Further, there are sub-uses within each of these general classifications and any physical alteration leading to a change from one sub-use to another would also qualify as new construction.

\* \* \*

"Following is a list of uses, both general and sub-uses. The list is not intended as all inclusive but rather illustrative.

\* \* \*

General UseSub-Use

## Commercial

Office Buildings  
Financial Buildings  
Retail Stores  
Professional Buildings  
Food Services  
Cocktail Lounges  
Food Sales  
Automotive Sales  
Service and Repair Shops"

As you can see, retail stores and food services constitute two different sub-uses in the commercial use. It is our position that physical alterations that lead to a change from one of these sub-uses to another constitutes new construction.

If you have any questions or wish to discuss this further, please contact me.

Very truly yours,

Michele F. Hicks  
Tax Counsel

MPH:mw

cc: Mr. Alexander H. Pope, Los Angeles County Assessor

bcc: Mr. Gordon Adelman  
Mr. Robert Gustafson  
Mr. Verne Walton